

Town of Amherst
Zoning Board of Appeals - Special Permit
DECISION

Applicant: Howard Ewert,
284 North Pleasant Street, Amherst, MA

Date Application filed with the Town Clerk: May 11, 2005

Nature of request: Petitioner seeks a Special Permit, under Section 9.22 of the Zoning Bylaw, to alter a non-conforming building, to install an exterior door in the basement in order to add a bedroom, to relocate an exterior door and to add an interior wall on the first floor in order to add a bedroom, for a total of four bedrooms in the rear house.

Location of property: 63-65 North Prospect Street,
(Map 11C, Parcel 7 & 218, R-G Zone)

Legal notice: Published in the Daily Hampshire Gazette on May 25 and June 1, 2005, and sent to abutters on May 24, 2005.

Board members: Zina Tillona, Ted Rising and Joan Golowich

Submissions:

The applicants submitted the following documents:

- A Management Plan dated April 25, 2005
- A series of sketch plans (undated) of the basement, first floor and top floor of the rear building showing the proposed changes
- A written Explanation of specific requests (undated), prepared by Howard Ewert
- A sheet showing dimensional regulations for the R-G zone and showing the existing and proposed dimensions for the buildings at 63 and 65 North Prospect Street
- A sketch site plan (undated) showing the property with the two houses, the parking lot and driveway, existing plantings and walkways
- A letter from Howard Ewert to neighbors, dated May 26, 2005, explaining the application
- A letter dated June 4, 2005, from Howard Ewert to Bob [Abramms] regarding management of the property at 63-65 North Prospect Street
- A letter from Howard Ewert, dated June 6, 2005, to [Anne} Sterling, abutter to the south, regarding the rock wall project
- A Floor Plan, dated August 4, 2005, prepared by Kraus-Fitch Architects, Inc., showing floor plans for the main level and basement level of the rear building and photographs of the rear building.
- Written comments, prepared by Howard Ewert, dated August 11, 2005, for the August 18, 2005, ZBA hearing Re: 63-65 North Prospect Street
- A Survey and Proposed Site Plan, dated August 18, 2005, prepared by Hatch Mott MacDonald, showing parking, proposed site improvements and planting.
- A current sample Lease Agreement used by Mr. Ewert for his tenants

Town staff submitted the following documents:

- The Planning Department submitted Memorandum Re: ZBA FY2005-00032, dated June 6, 2005, commenting on zoning, previous permits, dimensional requirements, parking, landscape planting, lighting, historical issues and the Management Plan.
- The Fire Department submitted a memorandum, dated June 13, 2005, commenting on access, water supply and smoke detectors.

Neighbors submitted the following documents or made the following telephone calls:

- Bob Abramms submitted a letter, dated June 10, 2005, in opposition to the application.
- Joseph S. R. Volpe submitted a letter, dated August 17, 2005, in support of the application and suggesting conditions to be placed on the Special Permit
- Joseph S. R. Volpe spoke with the zoning staff assistant via telephone on August 18, 2005, and expressed concerns regarding the poor appearance of the property, the issue of parking and the potential increase in the number of tenants.

Site Visit: June 7, 2005

At the site visit the Board observed the following:

- The location of the property in a neighborhood of older homes on small lots surrounded by mature trees, near the center of town;
- The existing, historical, wood frame houses on the site;
- The unpaved parking area on the south side of the property and the large Maple tree on the property line;
- The exterior of the three-story rear house with ongoing site construction in the vicinity of the house;
- The interior of the three-story rear house, including the basement, the first floor and the second floor levels.

Public Hearing: June 9, 2005; June 20, 2005; July 19, 2005.

The public hearing, originally scheduled for June 9, 2005, continued to June 20, 2005, due to lack of a quorum, was continued to July 19, 2005, due to the applicant's schedule. No testimony was taken on June 9th or 20th.

At the continued public hearing on July 19, 2005, Mr. Ewert presented the petition. He commented as follows:

- The property already has three Special Permits.
- The changes that are now being proposed for the rear house include adding a door in the basement, adding a wall on the first floor and changing the location of a door and a window at the front of the house.
- The number of bedrooms in the rear house would be clarified as four.

The Board and the Building Commissioner, Bonnie Weeks, asked questions and made comments related to the following:

- The location of doors and windows
- The addition of the wall
- The creation of a new bedroom on the first floor
- The plumbing
- The basement bathroom and the boiler room in the basement

- Utility access for all tenants
- The parking layout and the number of parking spaces required for the two houses
- The need for screening of the parking spaces
- The stone wall proposed for the south property line
- The need for a plan for the parking lot
- The outdoor stairs from the lower level to the main level of the rear house
- The need for exterior lighting
- The number of people who will live in the house

Ann Sterling Bush, 57 North Prospect Street, commented on the following issues:

- The excavation currently underway on site
- The number of cars that come and go from the site
- The large, old Maple tree on the south property line
- Parking in the front setback of the property without paving
- Parking within the canopy of the Maple tree
- Paving of the existing parking lot
- Control of the tenants
- The total number of tenants who would be allowed to live on the property
- The possible addition of a fence or wall along the south property line.

Bob Abramms and Mona Namark, 62 North Prospect Street, spoke in opposition to the proposal and commented on the following issues:

- The density of people living on the site
- The problem with noise made by tenants
- Management of tenants' behavior.

The Board noted that they had not received accurate site plans or floor plans with the application. The Board also noted that they had concerns about parking that needed to be addressed on the site plan, including a separation from the adjacent property to the south.

Zina Tillona MOVED to continue the evidentiary portion of the public hearing to August 18, 2005, at 7:30 p.m. Joan Golowich SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

Continued Public Hearing August 18, 2005

At the continued public hearing Howard Ewert presented documents as listed in the submissions, above, including professionally-prepared architectural drawings, a survey plan and a landscape and parking plan in addition to written comments dated August 11, 2005. He commented as follows:

- There has historically been a bedroom in the basement; he was not really proposing to add a bedroom there.
- A fire wall was needed to separate the boiler from the basement bedroom.
- An exterior door was needed to gain access to the boiler.
- If the door and window locations on the first floor were "swapped" then there would be an opportunity to create another bedroom next to the kitchen.
- There would be a total of 4 bedrooms in the renovated house.
- The number of tenants in the house would remain the same.

The Board asked questions about the condition of the bathroom, the size of the proposed basement bedroom, the number of bedrooms upstairs and the bathroom upstairs. The Board members also discussed the new survey, the property boundaries and the plans for control of stormwater runoff at the rear of the property.

Mr. Ewert described his plans for improving the parking lot.

The Board noted that the front house has two dwelling units with 4 bedrooms each for a total of 8 bedrooms in the front house. With four bedrooms being proposed for the rear house a total of 12 bedrooms would be located on the property. The Board commented that the number of parking spaces (9) may not be adequate. The Board also noted that the Zoning Bylaw limits the number of unrelated people in each dwelling unit to four.

The applicant and the Board discussed the number of parking spaces required and where tenants would park if spaces were not available on site.

Michael Pill, Mr. Ewert's attorney, commented that there may be a misunderstanding with regard to the number of tenants on the property.

The applicant and the Board discussed the proposed entryway for the basement and its proximity to the rear property line. They also discussed the condition of the property, the need for screening and the width of the proposed driveway.

The public commented as follows:

Bob Bush and Ann Sterling Bush, 57 North Prospect Street, commented on the parking lot, the problems with turning around in the parking lot, the need for an edge to the parking lot (such as landscape timbers), the numbers of people actually spending the night in the house (including guests), the actual number of cars that park on the site (more than 9), the damage that will be done to the Maple tree by cars parking under the canopy or by the paving of the parking lot and the need for a fence and a stone wall along the property line.

Bob Abramms, 62 North Prospect Street, gave examples of noise and disturbances caused by the tenants of this property and spoke in opposition to the application primarily because of the large number of tenants on a small lot. Although he considers Mr. Ewert to be a good landlord he believes that it will not be possible to control twelve tenants on such a small site.

The Board discussed the number of multi-family houses on the street.

Attorney Michael Pill questioned the fact that the neighbors did not report noise and disturbances to Mr. Ewert or the police.

The neighbors responded that they do not like to call the police because the problem is usually short-lived and is therefore over by the time the police arrive. In the future they will call the petitioner when excess noise occurs.

There was further discussion about the issue of parking.

The Board read the letter submitted by Joseph Volpe, dated August 17, 2005, and noted that Mr. Volpe had commented favorably with regard to the application and Mr. Ewert's abilities as a landlord, but that there were obvious problems with the proposal.

Ted Rising MOVED to close the evidentiary portion of the public hearing. Joan Golowich SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting

The Board noted that noise and parking were problems and that adding to the number of bedrooms would intensify the problems. The Board stated that the Board needed to balance the rights of property owners with the health, safety and general welfare of the inhabitants of the town. The Board also noted that while density was a desirable goal near the downtown, the reality was that with density came noise and other problems.

The Board further commented that while there may already be four tenants in the house and Section 9.22 of the Bylaw allows the extension of a non-conforming use or structure, the lot is very small and already has 10 bedrooms and the increased number of bedrooms may be more detrimental to the neighborhood than the existing non-conforming use or structure. The Board also expressed concern about the lack of control of the tenants and the potential for an increase in the number of tenants if the number of bedrooms were increased.

The Board discussed ways in which the increased use of the property could be managed so that it would not be more detrimental to the neighborhood. The Board discussed enforceable conditions that could be imposed that would mitigate the effects of the increased use.

The petitioner, Mr. Ewert, requested that his application be withdrawn, without prejudice.

Zoning Board Decision

Zina Tillona MOVED to approve the WITHDRAWAL of the application, as requested. Joan Golowich SECONDED the motion.

The Board VOTED unanimously to approve the WITHDRAWAL WITHOUT PREJUDICE of the application of Howard Ewert, under Section 9.22 of the Zoning Bylaw, to alter a non-conforming building, to install an exterior door in the basement in order to add a bedroom, to relocate an exterior door and to add an interior wall on the first floor in order to add a bedroom, for a total of four bedrooms in the rear house, at 63-65 North Prospect Street (Map 11C, Parcels 7 & 218).

ZINA TILLONA

TED RISING

JOAN GOLOWICH

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2005.
NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.